

### **REMARKS**

Applicant respectfully requests reconsideration. Claims 1-9, 11, 14-18, 130-140 and 145-148 were previously pending in this application with claims 1-9, 11, 14-18, 130-140 and 145-148 being rejected. No claims have been amended. No claims have been added. No new matter has been added.

#### **Double Patenting**

Claims 1-9, 11, 14-18, 130-140 and 145-148 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 7,208,122 (“Swager”).

Applicants respectfully traverse. The claims of Swager do not appear to teach or suggest a “particle” comprising a luminescent polymer as recited in independent claims 14, 130, 131, 147 and 148 of the present application. As discussed in remarks presented by Applicants’ in responses to rejections made in earlier Office Actions and in telephone interviews with the Examiner, a “particle” as properly construed in view of Applicants’ specification refers to “an isolated, independent structure, including at least one molecule” (see, for example, page 5, lines 11 - 12 of the specification). Therefore, an individual polymer molecule that is not itself in the form of an isolated, independent structure, but rather forms part of a bulk structure or continuum of material, which is not in particulate form, would not be a “particle” as required by independent claims 14, 130, 131, 147 and 148. None of the claims in Swager are directed to any isolated, independent structures (i.e. particles) that are independent from a bulk material comprising a luminescent polymer. In contrast, the claims of Swager only appear to specifically disclose the claimed polymer in the form of solid films (see, for example, claims 13-19 and 34-41). Furthermore, although there is mention of nanoparticles in Swager’s claims 4 and 23, there is no teaching or suggestion of these nanoparticles being made of luminescent polymeric materials as recited in claims 14, 130, 131, 147 and 148 of the present application. Instead, the nanoparticles comprise an article that is a separate entity from the polymeric composition that is positioned adjacent the claimed polymeric composition of Swager to provide enhanced rigidity, sensitivity, selectivity, and stability to the composition (see, for example, claims 3 and 22).

Because the Swager claims do not teach or suggest a particle comprising a luminescent polymeric composition as recited in Applicants’ claims 14, 130, 131, 147 and 148, these claims are believed to be patentably distinct from the claims of Swager for at least this reason. The remaining

claims dependent on these that stand rejected on this ground are also believed to be patentably distinct from the claims of Swager for at least the same reason.

Regarding independent claim 138, Applicants do not find any teaching or suggestion in the claims of Swager of a method comprising covalently attaching a nucleic acid to a luminescent polymer as recited in claim 138. Although there is mention of oligonucleotides in claims 6 and 25 of Swager, the oligonucleotides are a part of an article that is positioned adjacent the claimed polymeric composition of Swager to provide enhanced rigidity, sensitivity, selectivity, and stability to the composition (see, for example, claims 3 and 22). There is no teaching or suggestion of covalently attaching the oligonucleotides to the polymeric compositions.

Because the claims of Swager do not teach or suggest a method comprising covalently attaching a nucleic acid to a luminescent polymer as recited in claim 138, this claim is also believed to be patentably distinct from the claims of Swager for at least this reason. The remaining claims depending from this claim that stand rejected on this ground are also believed to be patentably distinct from the claims of Swager for at least the same reason.

Accordingly, withdrawal of the rejection of the claims on this ground is respectfully requested.

In view of the above remarks, Applicants believe the pending application is in condition for allowance.

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Respectfully submitted,

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